

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Communications Division
Broadband, Video & Market Branch**

**RESOLUTION T-17658
October 10, 2019**

RESOLUTION

RESOLUTION T-17658. Approves Additional CASF Funding of up to \$9,061,201 to Race Telecommunications, Inc. dba Race Communications to complete the Gigafy Phelan Project.

SUMMARY

This resolution approves additional California Advanced Services Fund (CASF) funding of up to \$9,061,021 to Race Telecommunications, Inc. dba Race Communications (Race) to complete the Gigafy Phelan Project. This additional funding will enable Race to cover: (1) unanticipated costs of constructing temporary poles due to a greater pole failure rate than was represented at the time of application; (2) increased labor and construction costs related to a higher demand in fiber deployment and construction; (3) unanticipated pole inspection costs imposed by Southern California Edison (SCE) beginning January 2018; and (4) additional administrative costs to complete those tasks. Due to these unforeseen costs increases, Race is unable to deploy to 4,108 households in the approved project area. Staff excludes 20 percent of those households because Frontier has deployed to those locations using Federal Communications Commission (FCC) Connect America Fund (CAF) II funding. To reach the remaining 80 percent of households, Staff recommends granting Race 60 percent of the additional project costs, with certain adjustments.

BACKGROUND

On July 13, 2017, the Commission adopted Resolution T-17525, approving Race's application for a CASF grant of \$27,629,599 to construct the Gigafy Phelan Project. The \$27,629,599 represents a 60 percent CASF funding level. Once complete, the Project will extend gigabit-capable high-speed internet service to an estimated 7,606 households in the communities of Phelan, Pinon Hills, Oak Hills, and parts of Hesperia in San Bernardino County.

On November 1, 2018, Race submitted a request for \$12,656,979 in additional CASF funding, citing increased project costs related to excessive pole failure, higher labor and

construction costs, and unforeseen administrative costs related to the installation of outside plant. On March 12, 2019, Race requested an additional \$2,393,776 for unforeseen costs associated with post installation inspections imposed by SCE, bringing the total request to \$13,153,695 in additional CASF funding.

Previous Reviews of Requests for Additional Funding

CASF Program rules and guidelines, along with previously adopted Commission Decisions related to the CASF Program, do not discuss a process for addressing requests for additional funding. Instead, Staff has reviewed these requests on a case-by-case basis, with the Commission approving requests for additional CASF Infrastructure Account funding when Staff determined that exogenous factors beyond the applicant's control were the main reason for cost increases.¹ In the future, the Commission may develop procedures and rules to address changes to projects, including requests for additional funding, on a more systematic, procedural basis.

Legislative Changes to the CASF Infrastructure Account Since Approval of Resolution T-17525

The Commission approved the Gigafy Phelan Project Grant prior to the enactment of Assembly Bill (AB) 1665 in October 2017. Among other items, AB 1665 revised CASF rules to prohibit the Commission (until July 1, 2020) from awarding projects located in census blocks where an existing provider accepted Federal Communications Commission (FCC) Connect America Fund (CAF) II funding.² Under the new statute, a new CASF application proposing to serve this project area would not be eligible. However, Staff believes the Commission has the authority to approve a request for additional funding of an existing project.

On January 15, 2019, Frontier submitted a letter to the Commission indicating that it deployed to 808 of the households in the Phelan project area as part of the company's CAF II deployment. Race's amended request excludes Frontier's 808 CAF II deployed households in the Phelan project area. Race requests that CASF contribute 70 percent of costs to complete the Gigafy Phelan build.

¹ See Resolution T-17408, California Broadband Cooperative to complete the Digital 395 Project; Resolution T-17557, Ultimate Internet Access, Inc to complete Helendale project; Resolution T-17517, Happy Valley Telephone Company to complete Olinda Underserved Broadband Project; Resolution T-17352, IP Networks Highway 36 Humboldt-Trinity Counties Project.

² See PU Code Section 281(f)(5)(C). Exceptions include if the CAF recipient applies for CASF funds to deploy beyond its commitments to the FCC, or if the CAF provider notifies the Commission that it has completed its CAF deployment in the census blocks.

DISCUSSION

Table 1, below, summarizes Race’s request for additional CASF funds:

Table 1. Race Request for Additional Funds

Item	Race’s Estimated Cost Increase	80% of Households³	Race Requested CASF 70% Contribution
Pole Failure	\$ 9,780,000	\$ 7,824,000	\$ 5,476,800
Labor & Construction	\$ 8,971,501	\$ 7,177,201	\$ 5,024,041
Pole Inspections	\$ 2,393,776	\$ 1,915,021	\$ 1,340,515
Admin Costs	\$ 2,343,464	\$ 1,874,771	\$ 1,312,340
Total Requested Funds	\$ 23,488,741	\$ 18,790,993	\$ 13,153,695

Due to unforeseen costs increases, Race is unable to deploy to 4,108 households in the approved project area. Staff excludes 20 percent of those households because Frontier has deployed to those locations using CAF II funding. Staff recommends granting CASF funds to deploy to the remaining 80 percent of households.

Staff then examined each itemized cost increase in Race’s request to determine if the cost overruns were beyond Race’s control. The increases fall into four categories:

- 1) Pole failure;
- 2) Increased labor and construction costs;
- 3) Pole attachment and pole inspections; and
- 4) Administrative costs of outside plant.

Staff found that some of the cost increases resulted from exogenous factors, and other cost increases were unforeseen by Race when it applied in its initial CASF application.

I. Pole Failure

Table 2. Estimated Cost Increases due to Pole Failure

Item	Race Estimated Cost	Staff Recommendation
Poles	\$ 9,780,000	\$ 8,632,800

³ Excludes CAF II deployed locations in the unbuilt portion of the project area.

In its initial CASF application, Race submitted a budget estimating a 50 percent pole failure rate for the 15,000 poles along the company's proposed aerial fiber installation. Race based its pole failure rate estimate on a similar aerial pole project bordering the Phelan project area in the Hesperia Unified School District, which reported a 53 percent pole failure rate. When Ultimate Internet Access, Inc. (UIA) filed a competing application for a larger project area that also included Phelan at a significantly lower cost than Race's application, Staff questioned the disparity in costs. Staff contacted Southern California Edison (SCE), the pole owner, to inquire about the expected pole failure rate in the Phelan project area. SCE estimated that "about nine percent of poles in the Phelan area are statistically likely to fail and would need to be replaced over the next five years – regardless of any additional weight (such as that of a fiber cable) being added to the pole."⁴

Race submitted a revised application in January 2017 to reflect the lower pole failure rate, reducing its grant request. According to Race, three key factors reduced the cost of its application:

- 1) Volume discounts from vendors after new negotiations;
- 2) New lower pricing for outside plant; and
- 3) A major reduction in cost due to a much lower pole failure rate.

The Commission approved the grant for the Gigafy Phelan project with a 10 percent pole failure rate estimate. Since February 2018, when construction began, 43 percent of poles failed the new loading factor, more than the estimated 10 percent failure rate, resulting in increased labor and material costs to purchase and place new temporary poles. Race documented these costs in its 2nd, 3rd and 4th quarterly reports for the periods of April 2018-December 2018. Race estimates needing an additional \$9,7800,000 to account for the increase in setting temporary poles.

As noted in Table 2, above, Staff recommends approval of the additional funding for cost overruns related to excessive pole failure and the need to set additional temporary poles. Staff and Race reasonably relied on SCE assessments that reduced the pole failure rate estimate from 50 percent to 10 percent. Race intends to set temporary poles in lieu of undergrounding the fiber cable, primarily to minimize costs. Staff disallowed payment for work performed and for which Race received reimbursement; however, allowances were made for actual cost overruns based on invoices for completed labor and constructed poles at the higher rate.

⁴ Resolution T-17525 at 3.

In order to avoid duplicative payment for redundant poles, where CASF covers a portion (60 percent) of the cost of temporary poles and SCE ratepayers cover the entire cost of the full pole replacements in the future, Communications Division staff is directed to coordinate with Energy Division and SCE on a more expedited approach to replace the existing overloaded poles with new permanent poles (in lieu of temporary poles) for the remainder of the project. Staff is directed to request additional authority from the Commission if needed.

II. Increased Labor and Construction Costs

Table 3. Estimated Increased Labor & Construction Costs

Item	Race Estimated Cost	Staff Recommendation
Labor & Construction	\$ 8,971,501	\$ 7,071,362

The original grant amount was based on Race’s estimates of volume discounts from vendors and new lower pricing for outside plant. Race relied on 2016 material quotes for temporary poles to budget the project. However, more recent quotes from 2019 reflect a 180 percent increase in rates for materials. The volume discounts and lowered rates negotiated by Race in early 2017 are no longer available.

Staff finds it reasonable to approve funding for increased labor and construction costs. Staff examined Gigafy Phelan progress reports and payment requests to determine if the higher rates were applied in the past invoicing. Staff determined that the higher rates were applied beginning in October 2018. Additional funds will not be granted retroactively for work already completed prior to the effective date of the higher rates; allowances will be made for actual cost overruns based on invoicing.

III. Post-Attachment Pole Inspections

Table 4. New Post-attachment Pole Inspection Fees

Item	Race Estimated Cost	Staff Recommendation
Pole Inspections	\$ 2,393,776	\$ 2,393,776

On December 17, 2018, Race received notification from SCE of its intent to exercise the right to a post-installation inspection per its Pole Lease Agreement with Race. Section 6 (c) of the Agreement provides:

Licensee shall notify SCE when installation is complete. SCE shall have the right to inspect Lic actual costs incurred by SCE to perform this inspection within 30 days of receiving an invoice from SCE and SCE shall provide licensee with the results of its inspection, including identification of any deficiencies identified by SCE as part of this inspection (Emphasis added).

Although SCE has the right to post-attachment inspections at the Licensee’s expense, SCE historically has not exercised this right. Race was unaware of SCE’s decision to exercise this right until the company received a memo from SCE indicating it would impose the inspection fee of \$232 per pole beginning January 1, 2018, resulting in \$2,393,776 in unanticipated costs as shown in Table 4. Staff finds Race’s request reasonable and recommends approval of funding these unforeseen costs.

IV. Administrative Costs of Outside Plant

Table 5. Estimated Additional Administrative Costs of Outside Plant

Item	Race Estimated Cost	Staff Recommendation
1. PPHCSD Line Locating Costs	\$ 999,878	\$ 429,567
2. Hub ADA Costs	\$ 187,477	\$ 21,912
3. Pre-Construction	\$ 249,969	\$ 124,985
4. Construction Management	\$ 406,200	\$ 203,100
5. Permitting	\$ 499,939	\$ -
TOTAL	\$ 2,343,464	\$ 779,563

Race requests \$1 million in compensation for the Phelan Pinon Hills Community Service District (PPHCSD) underground line locating services to support the Gigafy Phelan project. PPHCSD acts as its own regional notification center and performs its own line locating service.⁵ PPHCSD asserts that the scope of the project is larger than the District anticipated and the community cannot bear to cover these costs, which would be passed on to its ratepayers in the form of a rate increase. Staff finds it reasonable to approve some funding for the PPHCSD line locating services in support of the Gigafy Phelan project. Staff does not agree with Race’s unit cost calculations (based on the total linear feet of fiber installed) used to estimate the line locating services provided by the PPHCSD. Staff reviewed invoices provided by the PPHCSD and based on project progress, Staff estimates that PPHCSD will need \$429,567 to

⁵ See California Gov Code, Title 1, Division 5, Chapter 3.1 Protection of Underground Infrastructure [§§ 4215-4216.24].

complete the project. This estimate includes the line-locating labor and material costs (including administration fees) associated with PPHCSD services (see Table 5, item 1).

Race also contends that stricter project permitting requirements and added construction management resulted in additional administrative costs. Specifically, Race cites a delay by the County of San Bernardino to approve the construction permit for the Race hub⁶ site, which included site improvements to satisfy Americans with Disabilities Act (ADA) requirements. Staff recommends approving funding for the actual costs of site improvements to the hub, and a calculation based on the footage of unbuilt fiber for the pre-construction and construction management expenses (see Table 5, items 2-4).

Staff requested an itemized breakdown of the administrative costs and based on information provided, the request for additional permitting costs appears duplicative, since the cost of permitting was included in the cost of constructing the temporary poles. While Staff found some of the cost increases to be reasonable, it recommends disallowing the additional permitting costs requested (see Table 5, item 5).

STAFF RECOMMENDATION

After extensive analysis, Staff concludes that Race's project incurred some cost increases resulting from exogenous and unforeseen factors. In total, Race estimates needing an additional \$23,488,741 to complete the Gigafy Phelan Project and requests an additional \$13,153,695 in CASF funds.

Staff reviewed Race's revised request and noted that the estimates submitted were to construct the project in its entirety, not solely the costs to complete the unbuilt portion to the project. Staff reviewed invoices with the approved project budget to evaluate project construction status. Based on this analysis, Staff estimates the additional cost to complete the project is \$18,877,501. Staff made allowances for actual cost overruns based on invoices for completed labor and constructed items at the higher rates.

Staff recommends providing additional funding to Race to complete building to 3,300 of the 4,108 remaining households, which excludes the 808 households identified as CAF II deployed locations. Race requests reimbursement for 70 percent of project cost instead of the 60 percent reimbursement approved in Resolution T-17525, citing the revised rules adopted in D. 18-12-018. Because the Commission approved Race's application for the Gigafy Phelan Project prior to the enactment of AB 1665 and before the approval of

⁶ Hub is also known as the Point of presence (PoP).

D.18-12-018, Staff recommends adhering to the 60 percent CASF funding level the Commission granted Race in July 2017.

Table 6 below summarizes Staff’s recommendation:

Table 6. Staff Recommended Funding

Item	Staff Estimated Cost Increase	80% of Households⁷	CASF 60% Contribution
Pole Failure	\$ 8,632,800	\$ 6,906,240	\$ 4,143,744
Labor & Construction	\$ 7,071,362	\$ 5,657,090	\$ 3,394,254
Pole Inspections	\$ 2,393,776	\$ 1,915,021	\$ 1,149,012
Admin Costs	\$ 779,563	\$ 623,651	\$ 374,190
Total Recommended Funds	\$ 18,877,501	\$ 15,102,001	\$ 9,061,201

Staff recommends granting Race a total of \$9,061,201 in additional CASF funds to complete the Gigafy Phelan Project and to build out infrastructure to the remaining 3,300 households in the project area.

Prevailing Wage

Section 1720 of the California Labor Code specifies that CASF-subsidized projects are subject to prevailing wage requirements. Race has committed to follow state prevailing wage requirements with regards to this project.

California Environmental Quality Act (CEQA)

All CASF grants are subject to CEQA requirements unless the project is statutorily or categorically exempt pursuant to the CEQA Guidelines.

The proposed funding changes contained in this Resolution do not change the scope of the project initially approved by the Commission, except for more poles being replaced than initially contemplated. The Commission previously found the project to be categorically exempt from CEQA review, pursuant to CEQA Guidelines sections 15301 (Existing Facilities) and 15304 (Minor Alterations to Land). The project as revised by this Resolution similarly qualifies for these exemptions from CEQA review.

⁷ Represents 80 percent of non-CAF II remaining households in the unbuilt project area.

Payments to CASF Recipients

Submission of invoices from and payments to Race shall be made at a minimum of 25-percent completion intervals, in accordance with Section XI of Appendix 1 of D.12-02-015 and according to the guidelines and supporting documentation required in D.12-02-015.

Payment to Race shall follow the process adopted for funds created under Pub. Util. Code § 270. The Commission generally processes payments within 20-25 business days, including Administrative Services review time. The State Controller's Office (SCO) requires an additional 14-21 days to issue payment from the day that requests are received by SCO from Administrative Services.

COMMENTS

In compliance with Public Utilities Code, §311(g), a notice letter was emailed on August 8, 2019, informing parties on the CASF Distribution List of this draft Resolution for public comment at the Commission's website at <http://www.cpuc.ca.gov/documents/>. The letter also informed parties that the final conformed Resolution adopted by the Commission will be posted and available at the same website.

Comments were submitted by the California Cable and Telecommunications Association (CCTA) and Race on August 28, 2019. Reply comments were submitted by Race and Inland Empire Regional Broadband Consortium (Inland Empire) on September 3, 2019.

CCTA's Comments

In its comments, CCTA urges the Commission to postpone action on Resolution T-17658 until the Commission conforms with the transparency requirements under Public Utilities Code, § 218(f)(10) to notify those on the CASF service list and post on the CASF website any amendments to an application for project funding at least 30 days prior to publishing a corresponding draft resolution.

In addition, CCTA urges the Commission to postpone action on Resolution T-17658 until the Commission adopts a process for awarding additional CASF funds. CCTA suggests a formalized process and standard be in place for greater consistency and accountability.⁸ Further, CCTA does not believe that the Draft Resolution provides a legal basis for CASF to pay for the investor owned utility (IOU) pole inspection fees.

⁸ CCTA Comments, August 28, 2019 at 3.

Race's Comments

In its comments, Race supports approval of the project, but requests minor edits to the resolution, specifically to have their legal name reflected in the Resolution.

Race's Reply Comments

In Race's reply comments to CCTA, Race urges the Commission to reject CCTA's argument that a pre-AB 1665 CASF grant is subject to the new AB 1665 rules. Further, Race disagrees with CCTA and argues that postponing action on Resolution T-17658 until the Commission adopts a process for awarding additional funds is redundant, anti-competitive, and anti-consumer.

Race also urges the Commission to reject CCTA's argument that the charges for the pole inspection fees should be disallowed, stating that the contract with the IOU allows for the post attachment pole inspection fees but that in the ten years of the contract with the IOU, the pole inspection fees were never charged to Race, until December 2018. As a result, the fees were not included in Race's original application for the project.

Inland Empire's Reply Comments

Inland Empire disagrees with CCTA in its reply comments and asserts that a process is not required, a delay in completing the project is unacceptable to the local community, and that the Phelan request for additional funds is consistent with prior CASF grantees that were awarded additional funds due to exogenous factors. Additionally, Inland Empire argues that it is unreasonable to apply AB 1665 requirements on a pre-AB 1665 project. Inland Empire reiterates the importance of completing the project and indicates that the project has strong community and stakeholder support as well as an endorsement by the County of San Bernardino.

CD's Responses to Comments and Reply Comments

Staff agrees with CCTA's comment regarding the transparency requirement. Therefore, a notice letter was e-mailed on September 9, 2019, informing parties on the CASF Distribution List that this draft resolution was re-published in order to comply with Public Utilities Code §281(f)(10). The letter also informed parties that a second round of comments on this draft resolution must be submitted no later than September 30, 2019. Reply comments will be accepted no later than October 3, 2019. No comments were received during the second comment period.

Staff agrees with Race and Inland Empire's reply comments regarding the postponing of Resolution T-17658 and whether a new process is necessary for reviewing CASF additional funds requests. Therefore, Staff rejects CCTA's argument that

Resolution T-17658 should be postponed until a process is developed for reviewing CASF additional funds request. Staff agrees with Race and Inland Empire that there is no need for a new standard or guideline as the Commission has approved these requests when Staff has determined on a case-by-case basis, that exogenous factors beyond the applicant's control were the main reason for cost increases.

Further, staff disagrees with CCTA's argument that the IOU pole inspection fees should be disallowed. Instead Staff agrees with Race's response that the Pole Lease Agreement with the IOU provides that a licensee is responsible for any post attachment pole fees but that in the ten years of the contract with the IOU, the pole inspection fees were never charged to Race, until December 2018. As a result, the fees were not included in Race's original application for the project.

Staff agrees with Race regarding its request to have their legal name reflected in the Resolution and made minor edits throughout the Resolution.

FINDINGS

1. The Commission adopted Resolution T-17525 on July 13, 2017, providing \$27,629,599 in CASF funds to Race Telecommunications, Inc. dba Race Communications for the Gigafy Phelan Project, amounting to 60 percent of the estimated total project costs.
2. On November 1, 2018, Race submitted its formal request for \$12,656,979 in additional CASF funding. On March 12, 2019, Race amended its request to include additional costs for a total of \$13,153,695 in additional CASF funding, using a 70 percent CASF contribution factor.
3. After reviewing the request, Staff determined that \$15,102,001 in total project cost increases for eligible households were attributable to factors beyond the control of Race.
4. Based on application of the authorized 60 percent and 40 percent share of project costs between the CASF program and Race, as adopted in Resolution T-17252, the Commission should approve Race's request for additional CASF funding in the amount of \$9,061,201 to cover cost overruns deemed beyond Race's control.
5. The project is categorically exempt from CEQA review, pursuant to CEQA Guidelines sections 15301 (Existing Facilities) and 15304 (Minor Alterations to Land).

6. Notice letters were e-mailed on August 8, 2019 and September 9, 2019, informing all parties on the CASF Distribution List of the availability of this draft Resolution for public comment at the Commission's website at <http://www.cpuc.ca.gov/documents/>. These letters also informed parties that the final conformed Resolution adopted by the Commission will be posted and available at the same website.

THEREFORE, IT IS ORDERED that:

1. The Commission shall award additional funding of up to \$9,061,201 from the CASF Infrastructure Grant Account to Race Telecommunication, Inc. in order to complete the Gigafy Phelan Project in San Bernardino County.
2. Race shall comply with all guidelines, requirements and conditions associated with the CASF funds award as specified in Resolutions T-17525 and T-17658.
3. Race shall complete the Gigafy Phelan Project with the scope specified in Resolution T-17525. If Race fails to complete the project in accordance with the approval granted by the Commission and this Resolution, Race will be required to reimburse some or all of the CASF funds it has received.

Resolution T-17658
CD/LT1/JSC

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a meeting of the Public Utilities Commission of the State of California held on October 10, 2019, the following Commissioners voting favorable thereon:

Alice Stebbins
Executive Director

MARYBEL BATJER
President
LIANE M. RANDOLPH
MARTHA GUZMAN ACEVES
CLIFFORD RECHTSCHAFFEN
GENEVIEVE SHIROMA
Commissioners